

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Region 32**

Castro Valley, California

EDEN MEDICAL CENTER

Employer

and

Case 32-RC-4715

TEAMSTERS LOCAL 856,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AFL-CIO

Petitioner

and

HEALTHCARE WORKERS UNION, LOCAL  
250, SERVICE EMPLOYEES INTERNATIONAL  
UNION, AFL-CIO

Intervenor

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer, a non-profit California corporation, operates an acute care hospital located in Castro Valley, California. During the past twelve months, the Employer has derived gross revenues in excess of \$250,000 and has purchased and received goods or services valued in excess of \$5,000 which originated outside the State of California. Based on the foregoing, I find that the Employer is engaged in commerce within the

meaning of the Act. Accordingly, assertion of jurisdiction is appropriate herein.

3. The parties stipulated and I find that the Petitioner and Intervenor are labor organizations within the meaning of Section 2(5) of the Act. The labor organizations involved claim to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act. 1/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 2/

**INCLUDED:** All full time, regular part-time and per diem histology technicians, laser optics technicians, senior cardiology technicians, cardiology technicians, cardiac rehabilitation technicians, radiologic technologists, radiologic technologists-multi specialty, ultrasound technologists I, ultrasound technologists II, medical technicians: EKG tech/phlebotomist, medical technicians/bacteriology assistant, EKG monitor technicians, respiratory care practitioners (reg), respiratory care practitioners (cert), staff therapist assistants (PTA/COTA), nuclear medicine technologists, medical records technicians/day shift, medical records technicians/PM coder/outpatient surgery, medical records technicians, senior medical records technicians, pharmacy technicians, and pharmacy technician/clerks employed by the Employer at its Eden Medical Center, Baywood Court Skilled Nursing Facility and Laurel Grove Hospital facilities located in Castro Valley, California.

**EXCLUDED:** All employees currently covered by collective bargaining agreements, all other employees, guards, and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the notice of election 3/ to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United

States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **TEAMSTERS LOCAL 856 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO; HEALTH CARE WORKERS UNION, LOCAL 250, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO; or NEITHER.**

### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359, 361 fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in each unit shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before March 30, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC. 20570. This request must be received by the Board in Washington by April 6, 2000.

**DATED**, at Oakland, California, this 23rd day of March, 2000

/s/ James S. Scott  
James S. Scott, Regional Director  
National Labor Relations Board  
Region 32  
1301 Clay Street, Suite 300N  
Oakland, California 94612-5211  
32-1194

440-1760-3400  
440-1760-3420

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1/ Although they disagree on whether certain classifications should be included as technical employees, the Employer and Petitioner agree that an election in a unit of technicals is appropriate at this time. Intervenor, on the other hand, argues that the petition should be dismissed as untimely because the Employer and Intervenor are parties to a current collective bargaining agreement covering both technical and service employees. Thus, based on Crittenton Hospital, 328 NLRB 1 (1999), an election is not appropriate because there is a pre-existing non-conforming unit (technical and service) represented by Intervenor. It is Intervenor's position that the only appropriate unit is either the unit it currently represents or a mixed unit of all technical and service employees.

The unit which Intervenor currently represents pre-dates the Board's rulemaking in health care units. The unit includes classifications which the Board normally finds to be technical (such as licensed vocational nurses, licensed psychiatric technicians, operating room technicians, etc.) as well as those which the Board normally finds included in the "all other employees" unit (such as housekeepers, cooks, dishwasher/pot washer, nursing assistant, etc.). The technical classifications which Petitioner seeks to represent have existed for many years and also, for the most part, pre-date at least the current collective bargaining agreement between the Employer and Intervenor. Basically, Petitioner seeks an election among all of the Employer's residual technical employees.

The Board's decision in Crittenton is not controlling in this matter. In that case, the Petitioner sought to represent a unit of registered nurses which was co-extensive with one currently represented by the Intervenor. The unit, however, did not include 13 classifications of specialty nurse classifications. The Board found that the Health Care Rule does not require that an historical nonconforming unit must be enlarged to conform to the units prescribed by the Rule.

In Crittenton, the Board noted an earlier case, Levine Hospital of Hayward, 219 NLRB 327 (1975), wherein an election among a residual unit of medical records clerks and transcribers was not found warranted. During rulemaking, the Board also noted that the "continued vitality" of Levine was a "question whose answer would be deferred pending adjudication." 284 NLRB 1527, 1570-1571 (1988). However, the Board specifically refused to address, and left "to another day" the issue presented in the instant case – whether a non-incumbent union may represent a residual unit of employees in the healthcare industry. Under these circumstances, I find that an election among the technical employees sought by Petitioner is appropriate.

2/ All parties stipulated and agree that the following classifications are properly included in the unit as technical employees: histology technicians, laser optic technicians, senior cardiology technicians, cardiology technicians, cardiac rehabilitation technicians, radiologic technologists, radiologic technologists – multi-specialty, ultrasound technologists I, ultrasound technologists II, respiratory care practitioner (reg), respiratory care practitioner (cert), and staff therapy assistants (at Eden and Baywood Court only).

The Employer and Petitioner agree that the following additional classifications are properly included in the unit as technical employees: medical technicians: EKG tech/phlebotomist, medical technicians: bacteriology assistant, EKG monitor technicians, and nuclear medicine technologists. The Intervenor contends that, except for nuclear medicine technologists, who are professional employees, these classifications belong in the service or “all other employees” unit.

Additionally, the Employer contends that the following classifications should also be included in the technical unit: medical records/PM shift, medical records/day shift, medical records/PM coder/outpatient surgery, medical records technicians, senior medical records technicians, pharmacy technicians and pharmacy technicians/clerks. Petitioner argues that none of these classifications are technical in nature. The Intervenor agrees that only the senior medical records technicians and pharmacy technicians are technical employees but does not take a firm position on the others.

The Employer operates an acute care hospital with 319 licensed beds and employs a total of approximately 860 people. The facilities involved in this proceeding include Eden Medical Center (the main hospital), Laurel Grove Hospital and Baywood Court Skilled Nursing Facility. Eden and Laurel Grove are separate buildings on the same campus. Baywood is located about 1-1/2 to 2 miles away. Laurel Grove is an acute rehabilitation and skilled nursing facility which includes a hand therapy clinic. The only employees of Laurel Grove who are at issue are the laser optic technicians and one of the staff therapy assistants. At Baywood Court, Eden operates the skilled nursing facility under its license and provides therapists to treat patients there.

In Barnett Memorial Hospital Center, 217 NLRB 775 (1975), the Board set forth the following test for determining technical status:

...we apply the Board’s standard criteria that technical employees are those who do not meet the strict requirements of the term professional employee as defined in the Act but whose work is of a technical nature involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses.

Staff Therapy Assistants (PTA/COTA)

The Employer and Petitioner agree that four of the five physical therapy assistants should be included in the technical unit and are in agreement that this includes the three who work at Eden and the one at Baywood Court. Intervenor, however, argues that the physical therapy assistant at Laurel Grove should not be included on community of interest grounds.

The Laurel Grove assistant works at the Hand Therapy Clinic which is located on the same campus with and is part of the Eden Medical Center. At the Hand Clinic, the Employer employs a physical therapist, an occupational therapist, a staff physical therapy assistant, and a physical therapy aide. All staff therapy assistants are covered by a single job description, have the same pay rate and work under the same overall supervision. The assistant assigned to Laurel Grove is required to attend staff meetings and in-service meetings with the other employees at the Eden facility.

Based on the above, the staff therapy assistant at Laurel Grove shares a community of interest with the other assistants sufficient to be included in the technical unit. Thus, they perform the same work, have the same pay rates, ultimately report to the same supervisor, and regularly attend meetings and in-services together. It is also noted that the physical therapy aide at Laurel Grove is covered by the current contract between the Employer and the Intervenor. Additionally, the laser optics technician, who all parties agree is properly included in the technical unit, also works only at the Laurel Grove facility.

#### Medical Records Technicians

According to Tina Riley, Director of Medical Records, the position of medical records/PM shift has been vacant for three years and there are no plans to fill it. Furthermore, when filled, in the past, it was a supervisory position.

There is one individual in each of the other four medical records technicians positions. All technicians must have an associate's degree in medical records science, a national and state license, and successful completion of a national examination. As part of their formal training, they must take courses in anatomy, physiology and one year of coding. They must also complete 20 continuing education units on a two year cycle. Their pay ranges from \$17 to \$23 per hour.

The medical records/day shift technician interviews patients to obtain information for birth certificates and reviews discharge charts to evaluate if they fall into categories established by the Surgical Internal Medicine System. In order to perform this evaluation, the technician must be familiar with drugs and their expected reactions, the disease process, biology and methodology. Based on this knowledge, the technician decides if each chart meets the standards established by peer review groups or should go further and be evaluated by a physician.

The medical records/PM/coder/outpatient surgery, performs coding for outpatient surgery so the hospital can be reimbursed. This technician must read the

surgeon's report and then determine which classification matches the procedure performed. In assigning the categories, the technician must use his/her own judgment and experience with hundreds of procedures.

The medical records technician screens discharge charts to determine, according to 19 different elements, if the medical record has been properly completed by a physician. There are 101 different criteria included in the computer program with which the technician must be familiar. To perform the job, this person must know what is expected in the disease process, the generic use of drugs, complications, expectations of infection rates and drug relationships.

The senior medical records technician floats to any one of the above positions that is vacant due to illness, vacation, etc. This technician is also responsible for sitting on a Clinical Pathways Program, a multi-disciplinary team composed of a physician, nurse, pharmacist, dietitian, therapist and social service worker. This technician also fills in for the director when she is absent.

Based on their job duties, particularly the use of independent judgment when reviewing patient charts, as well as formal education and licensure requirements for the position, I find that the medical records/day shift, medical records/PM coder/outpatient surgery, medical records technician and senior medical records technician are technical employees and appropriately included in the unit. See Jewish Hospital of Cincinnati, 223 NLRB 614 (1976). Inasmuch as there is no incumbent in the medical records/PM shift classification and the Employer does not plan to fill the position, it is not included in the unit.

#### Pharmacy Technicians and Pharmacy Technician/Clerk

The pharmacy technicians work in the pharmacy filling orders, pulling drugs, repackaging and labeling. Additionally, they mix IV fluids for chemotherapy and other cancer treatments. This involves mixing the correct drugs in the correct proportions and taking proper precautions in doing so. According to the director, Gordon Chew, the technicians basically perform the same functions as the pharmacists but all of their work must be supervised. In addition to the technical work, the clerk is also responsible for making sure that all of the required paperwork is completed.

All pharmacy technicians must be registered with the State Board of Pharmacy. To register, a technician must either complete a program accredited by the American Society of Health Systems Pharmacists or have an AA in a health related field. About half of the technicians have also passed an examination given by the Pharmacy Technician Certification Board. Their pay ranges from \$15.60 to \$20.27 per hour.

Although their work is directly supervised by a pharmacist, the pharmacy technicians must also exercise their skill and specialized knowledge in filling prescriptions and IV solutions with the proper amounts and mixtures. In view of this, as well as the training and licensing requirements, I find that the pharmacy technicians and

pharmacy technician/clerks are technical employees and properly included in the unit. Thus, the facts in this case are more similar to those in Duke University, 226 NLRB 470, 472 (1976) wherein the pharmacy technicians were found to be technical employees based on the educational and licensure requirements. Such was not the case in Meriter Hospital, Inc., 306 NLRB 598 (1992), cited by Petitioner in its brief, where the Employer did not require any formal education or certification.

#### Medical Technicians: EKG/Tech Phlebotomist and Bacteriology Assistant

The EKG/Tech Phlebotomists are responsible for performing electrocardiograph examinations and collecting blood and other specimens from all types and ages of patients. They must be skilled in using a wide range of appropriate equipment for collecting and handling the specimens as well as ensuring that the EKG monitoring equipment functions properly. In addition to these duties, the bacteriology assistant plates cultures and prepares smears and stains which are used to perform tests ordered by physicians. On a daily basis, they interact with nurses and physicians, as well as x-ray and respiratory therapy department employees, who are included in the unit as technical employees. They are also paid on a scale commensurate with other technical employees, i.e., \$15.50 to 21.00 per hour.

The Employer requires six months of prior experience in an acute care setting for both of these medical technician positions. Although formal post high school education is not a requirement, virtually all of the individuals in the positions have medical assisting certificates, varying amounts of college credits or phlebotomy certificates.

Although formal education is not a requirement for the medical technicians, the record evidence demonstrates that they are highly skilled, use a wide range of equipment and instruments and must exercise judgment in order to properly perform their duties, particularly when collecting blood and other specimens from patients. They also routinely interact with and are paid on a scale commensurate with other technical classifications. Accordingly, I find the medical technicians, EKG/Tech Phlebotomists and bacteriology assistant to be technical employees and properly included in the bargaining unit.

#### EKG Monitor Technicians

These technicians are responsible for monitoring the cardiac rhythms of patients in the telemetry unit. They work at the nurses station next to the cardiac care unit, observing and analyzing the patients' heart rhythms and reporting any changes to a registered nurse. They routinely meet with the physicians during their rounds to review any changes that have occurred. At the end of the shift, the technician reviews the rhythm strips and chooses the ones they feel are significant and should be included in the patients' permanent charts.

The Employer requires that new technicians have previous telemetry monitoring experience but no post high school formal training or certificates. Prior to 1997, this



work was performed exclusively by a registered nurse which is still the only other classification permitted to fill in when necessary. These technicians are also paid in a range commensurate with other technical employees, i.e., \$16.40 to 21.40 per hour.

The EKG monitor technicians also exercise independent judgment, based on skill and training, in determining which heart rhythm strips will become part of a patient's permanent chart. Their job can only be performed by a registered nurse and their pay scale is also in line with other technical employees. Thus, I find the EKG monitor technicians to be technical employees and will include them in the unit.

### Nuclear Medicine Technologists

These technologists perform a variety of nuclear medicine scans on patients, including bone, lung and GI bleeds. As part of their duties, they administer radioactive isotopes to patients, some of which are done through injections. They are required to operate numerous types of equipment including scanners, gamma cameras and Geiger counters.

The nuclear medicine technologists must possess a license issued by the California Department of Health Services. Although the Employer does not require a bachelor's degree for the position, some unspecified amount of post high school education appears to be necessary for the position. The full-time technologist has an AA degree in nuclear medicine; one on-call employee has a bachelor's degree in public health and the other on-call has some pre-med course work as well as a certificated program in nuclear medicine. The pay grade is the same as that of the ultrasound technologist I who the parties have agreed to include in the unit.

Contrary to the Intervenor, I find that the nuclear medicine technologists are technical rather than professional employees. The record evidence establishes that a bachelor's degree is not required for this position. The fact that a pathologist may be the only other classification qualified to perform the work is not controlling. Based on their duties, skill, required training and licensing and pay rates, the nuclear medicine technologists are properly included in the technical unit.

There are approximately 70 to 80 employees in the unit.

3/ Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.